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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF J.L., MINOR CHILD,)
AND HIS MOTHER, ERICA LOCKETT)

ERICA LOCKETT,)

Appellant-Respondent,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

CHILD ADVOCATES, INC.,)

Co-Appellee-Guardian ad Litem.)

No. 49A02-0611-JV-995

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tempore
Cause No. 49D09-0511-JT-43092

April 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Erica Lockett (Mother), appeals the trial court's involuntary termination of her parental rights to her minor child, J.L.

We affirm.

ISSUES

Mother raises two issues on appeal, which we restate as:

- (1) Whether the trial court denied her due process rights; and
- (2) Whether the evidence was sufficient to support the trial court's termination of her parental rights to J.L.

FACTS AND PROCEDURAL HISTORY

Mother is a biological parent to J.L., born May 14, 2002. On November 22, 2004, the Marion County Office of the Indiana Department of Child Services (DCS) filed its petition alleging that J.L. was a Child in Need of Services (CHINS) due to Mother's drug use and inability to care for him. On December 16, 2004, the trial court held a fact-finding hearing and adjudicated J.L. as a CHINS, and ordered him removed from Mother's care. The trial court subsequently held status hearings on February 9 and March 16, 2005; Mother appeared at both hearings.

On or about November 3, 2005, the DCS filed its Petition to Terminate the Parent-Child Relationship (the Petition) between Mother and J.L. On November 10, 2005, the

trial court held an initial hearing on the Petition, but Mother did not attend, as the DCS did not know her whereabouts. On February 4, 2006, Mother was served with the Petition, summons, and advisement of her rights at the Marion County jail, where she resided at the time. On February 27 and September 7, 2006, the trial court held pre-trial hearings, which Mother attended after being transported from jail. At the September 7 hearing, with Mother present, the trial date was set for September 21, 2006. On September 21, 2006, a trial on the Petition was held; however, Mother was not in attendance as she was then housed in the Allen County jail. On the same day, the trial court entered its Order Granting Termination of the Parent-Child Relationship, stating in pertinent part:

Order Granting Termination of the Parent-Child Relationship

* * *

The [court] finds that [Mother] having received notice of this action by service pursuant to the Indiana Rules of Trial Procedure, has failed to appear or have an appearance filed in this action, the [c]ourt shows this matter eligible for default. Witnesses sworn, evidence taken and concluded[, the court] now grants the Petition For Termination of the Parent-Child Relationship and makes the following findings:

* * *

2. At the dispositional hearing, the [c]ourt determined that it was in the best interest of [J.L.] to remain in the wardship of the Marion County Office of Family and Children [(MCOFC)].
3. [J.L.] has been removed from [Mother] for at least six (6) months under the dispositional decree.
4. There is a reasonable probability that the conditions which resulted in the removal of the child will not be remedied, that the conditions which require continued placement outside the home will not be remedied[.]

and that continuation of the parent-child relationship poses a threat to [J.L.'s] well being.

5. Termination of the parent-child relationship is in the best interests of [J.L.]
6. The [MCOFC] has a satisfactory plan for the care and treatment of [J.L.]

(Appellant's App. p. 15).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother argues that the trial court improperly terminated her parental rights to J.L. Specifically, Mother claims that the trial court violated her due process rights by conducting the trial in her absence. Alongside this argument, Mother contends that she was also denied the right to effective assistance of counsel, as evidenced by a denial of her right to be heard. Furthermore, Mother alleges that the evidence was insufficient to terminate her parental rights to J.L.

I. Termination of Parental Rights

The Fourteenth Amendment to the United States Constitution shields private family matters, such as child rearing, from unwarranted state intrusion. *In re W.B.*, 772 N.E.2d 522, 528 (Ind. Ct. App. 2002). Accompanying a parent's right to raise their children unimpeded, however, is the corollary responsibility to act in the children's best interest. *Id.* Failure to do so legitimately triggers state action, not for the purpose of punishing the parent, but to ensure that each child's best interests prevail. *Id.* "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will

give way when it is no longer in the child's best interest to maintain this relationship.” *Id.* (quoting *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000)).

The involuntary termination of parental rights is the most extreme measure that a court can impose for parenting failures, as it severs all rights of the parent to their child. *Id.* Therefore, termination is designed only as a last resort when all other reasonable efforts have failed. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). Accordingly, although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997).

II. *Due Process Violation*

First, Mother asserts that the trial court violated her due process rights by refusing to transport her from jail to the trial, as well as refusing to grant a continuance so that the trial could be held in her presence on a later date. In so arguing, Mother notes that she was released from jail just seven days after the trial; thus, continuing the trial would not have caused undue delay or prejudice to the parties. In addition, Mother contends that she was denied her right to effective assistance of counsel, which contributed to her failure to have a meaningful opportunity to be heard.

The Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.* “The fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaningful manner.” *Thompson v. Clark County Div. of Family and Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), *trans. denied* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The nature of the process due in a termination of parental rights proceeding turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. *Id.* The balancing of these factors recognizes that although due process is not dependent on the underlying facts of the particular case, it is nevertheless “flexible and calls for such procedural protections as the particular situation demands.” *Id.* (quoting *Mathews*, 424 U.S. at 334).

This court must first identify the precise nature of the private interest threatened by the State before we can properly evaluate the adequacy of the State’s process. *E.E.*, 853 N.E.2d at 1043. Here, both the private interests and the countervailing governmental interests that are affected by the proceeding are substantial. *See id.* In particular, the action concerns a parent’s interest in the care, custody, and control of her child, which has been recognized as one of the most valued relationships in our culture. *Id.* Moreover, it is well settled that the right to raise one’s child is an essential, basic right that is more precious than property rights. *Id.* As such, a parent’s interest in the accuracy and justice of the decision is commanding. *Id.* On the other hand, the State’s *parens patriae* interest in protecting the welfare of the children involved is also significant. *Id.* Delays in the adjudication of a case impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved. *Id.*

When balancing the competing interests of a parent and the State, we must also consider the risk of error created by the challenged procedure. *Id.* In this case, Mother suggests that the risk of error is great given the trial court's refusal to transport her to the trial, refusal to grant a continuance until she was released from jail, and her counsel's failure to call any witnesses on her behalf. We disagree. Initially, we observe that a parent does not have a constitutional right to be physically present at a final termination hearing. *Thompson*, 791 N.E.2d at 794. Rather, a parent is entitled to representation in a termination hearing, and the trial court shall provide to such parent *or her attorney* an opportunity to be heard and make recommendations at the hearing. Ind. Code §§ 31-32-2-5, 31-35-2-6.5(e) (emphasis added). In addition, a parent's right to be heard and make recommendations at the hearing can be fulfilled by submitting a written statement to the trial court. I.C. § 31-35-2-6.5(e). Furthermore, I.C. § 31-32-2-3(b) provides that in termination proceedings, a parent is entitled to: (1) cross-examine witnesses; (2) obtain witnesses or tangible evidence by compulsory process; and (3) introduce evidence on their behalf.

Here, we fail to find that Mother's rights were significantly compromised. The record indicates that Mother was represented by counsel at the final termination hearing; and although her attorney did not put forth any witnesses, the record discloses that she did cross-examine the State's single witness, DCS case manager, Charles Henderson (Henderson). In particular, Henderson testified that Mother has a history of homelessness and domestic violence, and that she failed to complete the services offered to her, which included drug and alcohol counseling, as well as parenting classes. Also, we note the

record shows that Mother's counsel made objections throughout the proceeding, one involving the admission of an exhibit, and two objecting to the trial court's denial of her request for a continuance.

Moreover, we find worthwhile the trial court's explanation of its denial of Mother's motion for a continuance, specifically that the matter had been pending for nearly a year, and that J.L. had been removed from his Mother's care for nearly two years. Our own review of the chronological case summary shows that the initial hearing was continued twice, and subsequent hearings were continued four times. We also cannot ignore that Mother's absence from the trial was due to being in jail. Therefore, given (1) the delay in the case, (2) that Mother was represented by counsel who actively participated in the termination hearing, (3) that Mother did not take advantage of the services offered by the DCS, and (4) that Mother does not have a constitutional right to be present at the hearing, we conclude that the risk of error caused by the trial court's denial of the continuance was minimal. *See E.E.*, 853 N.E.2d at 1044. Thus, in balancing Mother's interest with that of the State, which has an interest in protecting J.L. and preserving judicial resources, we find that the trial court's decision to move forward with the termination hearing did not deny Mother due process of law.

III. *Sufficiency of the Evidence*

Second, Mother argues that the DCS did not present sufficient evidence to terminate her parental rights to J.L. In particular, Mother contends that the evidence was insufficient to show that there is a reasonable probability that the conditions leading to

J.L.'s removal will not be remedied or that continuation of the parent-child relationship poses a threat to J.L.'s well being.

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

To effect the involuntary termination of Mother's parental rights to her children, the DCS must have presented clear and convincing evidence establishing that:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under [I.C.] § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999 the child has been removed from the parent and has been under the supervision of a county officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

- (i) the condition that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. A trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation." *Id.*

In its Order terminating Mother's relationship with J.L., the trial court found both that there was a reasonable probability that the conditions leading to J.L.'s removal would not be remedied, and that continuation of the parent-child relationship poses a threat to J.L.'s well being. However, we point out that under I.C. § 31-35-2-4(b)(2), the trial court was required to make only one of these findings. Thus, in our review, we choose to solely address Mother's first assertion, whether the conditions leading to J.L.'s removal are likely to be remedied.

In our review of the record, we find ample evidence to support the finding that the conditions causing J.L. to be placed outside of Mother's care are unlikely to change. When J.L. was removed from Mother's care in late 2004, Mother was in jail in Marion

County. When the initial termination hearing was held in November of 2005, Mother's whereabouts were unknown. In August of 2006, Mother was transported from the Indiana Women's Prison to the pre-trial hearing. Then, the following month, Mother was absent from the termination trial because she was in the Allen County jail. Thus, the proceedings involving the welfare of J.L. began and ended with Mother behind bars. In the meantime, she failed to complete court-ordered services, which included drug and alcohol education and counseling, a parenting assessment and parenting classes, and domestic violence counseling. Furthermore, the record unveils that Mother did not attend supervised visits with J.L. or make any committed effort to obtain stable housing. Therefore, we conclude that the DCS presented sufficient evidence that the conditions leading to J.L.'s removal will not be remedied. Accordingly, we affirm the trial court's termination of Mother's parental rights.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not violate Mother's due process rights by holding the termination hearing in her absence, and that the DCS presented sufficient evidence to terminate Mother's parental rights to J.L.

Affirmed.

NAJAM, J., and BARNES, J., concur.